

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.**

In the Matter of	)	
	)	MM Docket No. 99-25
	)	
Creation of a Low	)	RM-9208
Power Radio Service	)	RM-9242
	)	

**REPLY COMMENTS OF BIG CITY RADIO, INC.**

Michael Kakoyiannis  
President  
Big City Radio, Inc.  
11 Skyline Drive  
Hawthorne, NY 10532-2145  
914/592-1071

September 17, 1999

## **SUMMARY**

The record of this proceeding confirms that the proposal to create one or more classes of low power FM radio ( $\Delta$ LPFM $\cong$ ) must be rejected. The record fails to demonstrate any reason to find that the Proposal will satisfy any of three prerequisites to its adoption. Specifically, based on the accumulated evidence in this proceeding, the Proposal:

will interfere with existing radio service;

will postpone or preclude the advent of digital terrestrial radio; and

does not appear certain, or even likely, to attain its intended ends.

To the contrary, the studies of several organizations demonstrate that the elimination of interference safeguards simply to  $\Delta$ find $\cong$  more spectrum for LPFM stations will result in extensive and objectionable interference, and that premature adoption of LPFM radio services will risk any successful DAB implementation. Moreover, the record strongly suggests that, without legally or constitutionally questionable measures, the Commission can have no assurance that the Proposal will result in more viewpoint diversity, better local programming, or additional full power broadcast ownership.

Accordingly, the Commission should reject the Proposal as inconsistent with the efficient use of the radio spectrum and the public interest.

## TABLE OF CONTENTS

	<u>Page</u>
SUMMARY.....	i
TABLE OF CONTENTS.....	iii
COMMENTS OF BIG CITY RADIO, INC.....	<del>ψψ</del> . 1
I. <u>BASED ON</u> <u>THE RECORD, THE COMMISSION CANNOT CONCLUDE THAT LPFM STATIONS</u> <u>WILL NOT CAUSE INTERFERENCE. ....</u>	<u>5</u>
II. <u>NO EVIDENCE</u> <u>IN THE RECORD DEMONSTRATES THAT IMPLEMENTATION OF THE PROPOSAL</u> <u>WILL NOT SIGNIFICANTLY DELAY OR PRECLUDE DIGITAL RADIO. ....</u>	<u>10</u>
III. <u>THE RECORD</u> <u>ALSO ILLUSTRATES THAT PRO-LPFM ASSERTIONS AS TO THE ALLEGED</u> <u>BENEFITS OF THE PROPOSAL OFFER NO BASIS FOR ITS ADOPTION. ....</u>	<u>14</u>
IV. <u>CONCLUSION .....</u>	<u>21</u>

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.**

In the Matter of	)	MM Docket No. 99-25
	)	
Creation of a Low	)	RM-9208
Power Radio Service	)	RM-9242
	)	

To: The Commission

**REPLY COMMENTS OF BIG CITY RADIO, INC.**

Big City Radio, Inc. (A Big City<sub>≡</sub>), pursuant to Section 1.415 of the Commission's Rules, respectfully submits these reply comments with regard to the above-captioned proceeding, in which an overwhelming number of comments underscored the extensive dangers and minimal benefits from the proposal (the A Proposal<sub>≡</sub>) to create hundreds or thousands more FM radio stations (A low power FM<sub>≡</sub> or A LPFM<sub>≡</sub>). 1/ As noted in its Comments, Big City applauds the use of technological advancement for the betterment of radio. However, the Proposal would not so serve the public interest. Unless the Commission is willing to endanger the present and future of all existing FM services -- from full power stations to translators to reading services for the visually impaired -- to attempt an untried low power service that would enable, at most, a few, small radio stations to be added to areas already served by a number of radio stations and other media, the Proposal must

---

1/ Notice of Proposed Rule Making, Creation of a Low Power Radio Service, MM Docket

be rejected.

The studies in the record overwhelmingly demonstrate that the sweeping waiver of a number of interference safeguards will cause objectionable interference to existing FM radio B from full power to translators -- and to other existing services -- such as reading services for the visually impaired -- that advance the public interest through their use of the FM frequencies. <sup>2/</sup>

The Commission's own *Interim Report* did not demonstrate the contrary. <sup>3/</sup> In contrast to the compelling data compiled by the National Association of Broadcasters, the Consumer Electronics Manufacturers Association, and others, the *Interim Report* suffered from three critical failings:

it did not address the impact LPFM stations would have on the reception of *most* radios -- including the inexpensive portable or clock-type radio -- the most common form of radio sold;

it evaluated only a few radio receivers in highly specific conditions, and apparently did not consider whether the results of the study would apply to full power as well as low power stations;

it admitted that the analysis was an insufficient basis on which to form any type of general conclusion regarding the Proposal.

More troubling, at least If recent statements of the Chairman are any indication, however, the Commission does not appear to have recognized these fundamental flaws, in the *Interim Report*. <sup>4/</sup> which

————— Such flaws ~~only~~ become only more evident when viewed in comparison to the

---

No. 99-25 (released February 3, 1999) (A Notice).

<sup>2/</sup> See, e.g., Comments of Harrisburg Area Radio Reading Service at 1.

<sup>3/</sup> See William Inglis & David Means, *Interim Report*, Project TRB-99-3, *Second and Third Adjacent Channel Interference Study of FM Broadcast Receivers* (released August 5, 1999) (A Interim Report).

<sup>4/</sup> See, e.g., Speech of Commission Chairman William E. Kennard to National Association of Broadcasters (Sept. 2, 1999) (suggesting the *Interim Report* was "very

comprehensive studies of NAB and CEMA, among others [that were in the record by the comment deadline](#).

[For example](#), ~~T~~he NAB and CEMA ~~S~~tudies both offer significant and credible reasons to reject the Proposal. Unlike the *Interim Report*, both the NAB and CEMA studies looked at a wide variety of receivers, and both demonstrated that LPFM *will* cause widespread interference to existing radio services, especially to the inexpensive receivers critical to the ready availability of the medium, rather than the ~~A~~ insignificant  $\cong$  effects suggested by the *Notice*. ~~5/~~ And, as these and other comments make plain, the technical deficiencies of the LPFM Proposal do not end with interference, but range from diminished flexibility to significant hazards to technically innovative uses of spectrum -- such as synchronized operations or on-channel boosters. Such comprehensive studies underscore the real risks of LPFM, and that the hurried and sketchy *Interim Report* does not provide any basis for adoption of any type of LPFM proposal.

In addition, the comments make clear the danger the Proposal poses to the future of radio. Both the proposed digital audio broadcasting (~~A~~DAB  $\cong$ ) in-band, on-channel (~~A~~IBOC  $\cong$ ) systems and LPFM will increase the burdens on the FM band. Yet, unlike DAB, which will likely prove only a temporary burden, LPFM will permanently congest the spectrum, creating an unmovable obstacle to any DAB transition. Accordingly, comments from USA Digital Radio, Inc., Lucent Technologies Inc., and others underscore that the LPFM Proposal should not be adopted at this time, unless the Commission wants to forestall terrestrial digital radio for years.

Finally, the comments do not substantiate either the need or the necessary likelihood of success of the Proposal. Additional radio stations, even under strict regulatory

---

promising").  
~~5/~~ *Id.* at & 45.

regimes, do not appear sufficient to satisfy the Commission's standard for increased viewpoint diversity. The relatively few pro-LPFM comments that address such issues offer little reason -- short of constitutionally or legally dubious means -- to think the creation of LPFM stations is any more assured of further broadening actual viewpoints broadcast. Unless such public interest benefits are clear and compelling, the Commission cannot begin to consider a proposal that would require a sweeping waiver of established interference safeguards for hundreds or thousands of new stations.

In sum, hundred of commenters have filed thousands of pages in this proceeding -- some commenters even have filed a dozen or more submissions. But the Commission must do more than equate the public interest with the private desires of a vocal minority, especially when that minority is sensibly opposed by any party that understands the larger technical and service issues implicated by the Proposal. Rather, the Proposal cannot be adopted unless the record demonstrates that LPFM stations, as proposed:

- will not create objectionable interference to existing FM operations, including those employing innovative techniques to enhance service; and

- will accomplish, in some measurable and significant way, the Commission's intended ends of increasing viewpoint diversity in radio broadcasts, fostering programming of local interest beyond that already available, and increasing the number of new entrants into full-power broadcast media.

Because the record in this proceeding provides no non-arbitrary basis for either conclusion, the Proposal to create one or more classes of LPFM services cannot be adopted at this time.

**I.                    BASED ON THE RECORD, THE COMMISSION CANNOT CONCLUDE THAT LPFM STATIONS WILL NOT CAUSE INTERFERENCE.**

As Big City already has noted, the Proposal cannot be adopted consistent with Commission policy and precedent B and with the recent public statements of the individual commissioners -- 6/ unless it would cause no actual interference to existing services. 7/ None of the comments in this proceeding prove that no such interference will result. In fact, to the extent LPFM proponents even address such critical technical matters, most content themselves with parroting the superficial or preliminary analysis contained in the *Notice*. 8/

But the record is replete with facts demonstrating that the Proposal will cause interference -- including interference to the most common form of radio receivers. The studies of the National Association of Broadcasters (the ANAB Study<sup>≡</sup> or ANAB Comments<sup>≡</sup>) and the joint report -- filed as part of three separate comments -- of National Public Radio, Inc., Consumer Electronics Manufacturers Association, and the Corporation of Public Broadcasting (collectively, the ACEMA Study<sup>≡</sup>) prove that LPFM will -- indeed, must -- cause interference to existing services. 9/ Together, the studies demonstrate that:

more than 80 percent of the receivers tested by CEMA could not achieve the minimum acceptable listenable signal in the presence of second-adjacent interference;

the elimination of intermodulation protections will result in similar interference failures; and

real-world results are likely to be even worse than controlled laboratory testing.

---

6/ See, e.g., Speech of Commission Chairman William E. Kennard to National Association of Broadcasters (Sept. 2, 1999) (reiterating his commitment to preserving the technical integrity of the FM band).

7/ See, e.g., Big City Comments at 4-6.

8/ See, e.g., Comments of J. Rodger Skinner, Jr. at 32-33.

9/ See, e.g., Comments of National Association of Broadcasters at 28-40; Comments of National Public Radio, Inc. at 15.

In light of such evidence, the Commission cannot continue to presume that the Proposal would not result in significant interference to existing FM services.

The Commission's *Interim Report* does not demonstrate otherwise, in large part because of the Report's obvious deficiencies. Most important, the *Interim Report* does not study all types of radios. More than three-quarters of all radios sold in the United States in 1998 were clock or portable radios, including walkmans. <sup>10/</sup> Such ~~lower quality, but~~ inexpensive receivers are responsible for much, if not most, radio listening in the United States. <sup>11/</sup> Yet, the *Interim Report* declines to study such common ~~and inexpensive~~ receivers. <sup>12/</sup> Further, the *Report* studies only a few radio receivers -- a defect that leads the *Report* itself to acknowledge that it should not be used to support any general action. <sup>13/</sup> Moreover, the *Report* addresses only second and third adjacent channel interference in a shielded room -- an environment which excludes intermodulation interference and the interaction of potential interfering signals with unpredictable terrain or weather effects. These and other deficiencies in the *Interim Report* confirm that it cannot serve as the basis for adoption of the Proposal.

---

<sup>10/</sup> *Id.* at 9.

<sup>11/</sup> See CEMA Comments at 10.

<sup>12/</sup> Such bias only is exacerbated by the *Report*'s decision to evaluate nearly twice as many expensive  $\Delta$ stationary $\equiv$  receivers (Category IV) as it does low or moderately priced  $\Delta$ stationary $\equiv$  receivers (Categories I and II) combined. See *Interim Report* at 4-5. Accordingly, the *Report* not only ignores the receiver that is most readily available to persons of low or moderate disposable income levels, but also does not attempt to compensate in some small way by testing more moderately-priced (Category II) models.

<sup>13/</sup> See *Interim Report* at 5 ( $\Delta$ Because of the small sample sizes in each category, extreme caution must be exercised in interpretation of the data until sufficient additional examples can be tested to improve statistical significance. $\equiv$ ).

These defects should come as no surprise to the Commission. The *Report*<sup>=</sup>s authors properly and repeatedly recognized the study<sup>=</sup>s shortcomings. Indeed, the *Report* is rife with references that its work suffered from the Aneed to develop some information quickly,<sup>=</sup> the Aneed to get some *objective* data into the record as quickly as possible,<sup>=</sup> the Alack of equipment<sup>=</sup> readily available, the inability to include the most common type of radio receivers due to Atime constraints,<sup>=</sup> and the overall need for further study. <sup>14/</sup> Even in its Conclusions, the *Interim Report* took pains to limit the observations that Acan be conclusively made<sup>=</sup> from the *Report* to solely Athe sample at hand,<sup>=</sup> while cautioning that no party should draw Asweeping conclusions<sup>=</sup> from the limited data contained in the *Report*. Such caveats, viewed separately or in conjunction with the many flaws already noted, emphasize that the *Interim Report* simply cannot be deemed more reliable or Aobjective<sup>=</sup> than the far more extensive NAB and CEMA Studies.

Yet, despite the clear and repeated shortcomings apparent from the face of the *Interim Report*, including those expressly noted in the *Report* itself, members of the Commission still appear to consider the *Interim Report* as providing some a technical basis in support of ~~to~~ adopt LPFM. Specifically, in a recent speech to the NAB, Chairman Kennard stated that he has "been working with our engineers to make sure that a new low power radio service will not interfere with the existing radio service." <sup>15/</sup> The Chairman then referred to the *Interim Report* as a "very promising" study to this end.

---

<sup>14/</sup> *Interim Report* at 3, 4 & 5 (emphasis added).

<sup>15/</sup> Speech of Commission Chairman William E. Kennard to National Association of Broadcasters at 2 (Sept. 2, 1999).

Such statements are contradictory. If the Commission truly wants to "make sure" that LPFM will not result in objectionable interference, the *Interim Report B* or any study like it that tests only a few receivers in limited circumstances, that ignores whole classes of radio receivers, and/or that fails to consider the increased risks of interference caused by terrain, atmospheric or other effects B cannot be thought promising. It should not even be deemed to provide any useful information in the face of far more comprehensive studies demonstrating the extensive risks of interference posed by LPFM. ~~16/~~ - ~~These~~ Such more comprehensive studies (and related analyses or commentary) are not confrontational B they simply provide a complete and necessary picture of the dangers of LPFM, especially to those Americans who rely on the most common forms of radio receivers to enjoy the medium.

In fact, the *Interim Report* ~~only~~ demonstrates only that the Commission must make available for public comment any technical study relevant to its consideration of the Proposal. Such public comment is consistent with the Chairman's stated desire to "work closely with all interested parties" in concluding the LPFM proceeding. More important, such comment is evidently necessary to ensure that the Commission has sufficient information available to consider potential shortcomings or inaccuracies of such analyses. Otherwise, the Commission may unwittingly and illegally act in ways demonstrably contrary to the public interest because of conclusions drawn from incomplete or defective technical data. ~~17/~~

---

16/ See, e.g., Comments of National Association of Broadcasters at 28-40; Comments of National Public Radio, Inc. at 15; Comments of Consumer Electronics Manufacturers Association at 3; Comments of Corporation of Public Broadcasting at 15-19. Other studies confirm these well-documented concerns. For example, the Comments of the North Carolina Association of Broadcasters and the Virginia Association of Broadcasters illustrate the particular problems existing FM services in those states will experience due to LPFM stations.

17/ Thise obvious requirement for public comment as to any Commission study

In addition, the Commission must make available for public comment any technical study that attempts to analyze the possible effects of reducing the maximum FM deviation of the interfering signal or limiting the maximum modulating frequency of the interfering signal. <sup>18/</sup> Either limitation will diminish the quality of all FM signals, much as the restricted RF mask for AM stations slashed the signal quality of the AM band. With satellite digital radio on the horizon, FM stations across the radio dial cannot afford to compromise signal quality simply to create the potential for new LPFM stations. In any event, if the Commission truly is considering such steps as a prerequisite to LPFM, it must add the additional loss of quality resulting from such new limits to the already long list of threats LPFM poses to existing FM radio services.

## **II. NO EVIDENCE IN THE RECORD DEMONSTRATES THAT IMPLEMENTATION OF THE PROPOSAL WILL NOT SIGNIFICANTLY DELAY OR PRECLUDE DIGITAL RADIO.**

A multitude of comments emphasized the need for unimpeded transition to digital radio. <sup>19/</sup> The reasons are legion and manifest:

---

critical to this proceeding -- see, e.g., *Air Transport Association v. FAA*, No. 98-1109, slip op. (D.C. Cir. March 5, 1999) -- begs the question: if the Commission knew that the Proposal required more study than what its experts could perform during the comment period, why did the Commission not extend the comment period? Even the abbreviated study submitted by the Commission Staff was not publicly available prior to the comment deadline. For the Commission to issue a *Notice of Proposed Rule Making* without any technical support, and then prove unable to make available any type of technical study of the Proposal prior to the comment deadline, while effectively requiring the general public to complete *any* technical study before that deadline, appears entirely arbitrary and capricious. ~~Specifically, the Commission has yet to explain why its apparent need for such haste in the LPFM proceeding, while other proceedings -- including the just-recently concluded local ownership proceedings -- have languished for years.~~

<sup>18/</sup> See *Interim Report* at 3-4.

<sup>19/</sup> See, e.g., Comments of Cox Radio, Inc. at 17-20 (noting that waiting for DAB will not preclude future implementation of LPFM but that implementation of LPFM will delay, if not preclude, any transition to DAB); Comments of Public Radio Regional Organizations at 13-14 (explaining the importance of further progress on DAB before closing comments on LPFM).

transition to digital radio promises to benefit all radio listeners and broadcasters nationwide;

prompt transition to digital audio broadcasting is crucial to the future viability of the medium;

the transition to digital is a process with a definite endpoint, necessitating only a temporary burden on FM spectrum, but one that should be accomplished as quickly as possible to limit the number of new FM stations that commence operations pre-transition; and

DAB implementation will prompt consumers to purchase higher-quality receivers that, in turn, may enable greater use of the FM spectrum in the future.

Again, only a relative handful of LPFM proponents even addressed the critical matter of the transition to digital audio broadcasting. Most of them either downplayed the importance of digital transmissions, argued that the Commission should not worry about digital/LPFM interplay, or alleged that the public has no interest in higher quality audio service. <sup>20/</sup> The Commission should know better. Since 1992, the Commission's policy has staunchly been one of Acommit[ment] to continuing [to] work with the broadcast industry to ensure that the broadcasters are able to promptly implement terrestrial DARS. <sup>21/</sup> More recently, in statements released with the *Notice*, each Commissioner indicated that LPFM should not be permitted to interfere with the transition digital radio. <sup>22/</sup> Moreover, just two weeks ago in his speech to the NAB, Chairman Kennard repeated his the Commission's commitment to "a digital future for radio." <sup>23/</sup>

---

<sup>20/</sup> See, e.g., Comments of Mike Hoyer at 10 (demanding that any digital transition either engineer around LPFM or live with the Atemporary interference that would result); Comments of J. Rodger Skinner, Jr. at 35-36 (suggesting that FM band does not need improvement). Ironically, Skinner suggests that, if a digital transition is to be attempted, that new broadcast spectrum should be made available. Of course, if the Commission chooses to go that route, it should reject the Proposal and instead provide new spectrum sufficient to accommodate additional FM stations as well as any new digital stations.

<sup>21/</sup> *Amendment of the Commission's Rules with regard to the Establishment and Regulation of New Digital Audio Radio Services*, 7 FCC Rcd 7776 (1992).

<sup>22/</sup> See Comments of Lucent Technologies Inc. at 3 (quoting each commissioner).

<sup>23/</sup> Speech of Commission Chairman William E. Kennard to National Association of Broadcasters at 2(Sept. 2, 1999).

~~What is most troubling about such stated commitment to digital terrestrial radio is~~  
~~that~~ Yet, the Commission's actions in the proceeding suggest otherwise. For example, in May, the Commission stated that it would issue a Notice of Proposed Rule Making~~n NPRM~~ regarding digital audio broadcasting (the "DAB NPRM") by the end of the summer, so that it might be considered in conjunction with LPFM. Now, Chairman Kennard, in the same speech where he reiterated the Commission's commitment to digital radio, noted that any~~the~~ DAB NPRM will not be issued until autumn at the earliest. Yet, the LPFM proceeding continues apace. Likewise, when asked to extend the reply comments in this proceeding until such an NPRM was issued, the Commission inexplicably concluded that such an extension does~~id~~ not appear ~~to be~~ necessary at this time, despite the wealth of comments, including Big City's, which demonstratedd the critical dangers premature consideration of LPFM poses to any DAB implementation~~of DAB-IBOC~~. 24/

Simply stated, no LPFM proponent can assert that any form of DAB may be implemented simultaneously or following any implementation of LPFM when the Commission has not even begun a discussion of what the DAB transition will entail or how it will occur. If the Commission is truly ~~to be~~ committed to a rapid digital transition for radio, any action on LPFM should be postponed, for legal, technical, and administrative reasons, until the issue of DAB has been settled.

---

24/ See Order at 3 (rel. August 31, 1999) (extending reply comment date until September 17, 1999, but deferring request for extension until after Notice of Proposed Rule Making on DAB has been issued).

Nor can the Commission continue to rely on the *Notice*'s conjecture that second-adjacent LPFM stations would not affect the transition to digital radio to justify a premature consideration of LPFM. <sup>25/</sup> Indeed, Lucent's current thinking on the subject has resulted in its being pessimistic about the effects of permitting low power FM stations [especially LP1000 or LP100 stations] on adjacent channels. <sup>26/</sup> According to Lucent, elimination of second and third adjacent channel protection for any new low or full power radio stations will constrain the technical capability of an IBOC system to replicate each station's analog service area with a digital signal during a transition period <sup>27/</sup> and/or will cause interference to the analog LPFM signal in a portion of that station's service area. <sup>27/</sup> Simply put, LPFM interference will not be restricted to existing analog signals, but will also reduce or completely vitiate the most obvious consumer benefit of digital radio -- sharper signals.

---

<sup>25/</sup> See *Notice* at & 49.

<sup>26/</sup> Comments of Lucent Technologies Inc. at 5.

<sup>27/</sup> *Id.*

Likewise, USADR raises significant concerns regarding the timing and implications of the *Notice*'s LPFM Proposal. USADR reiterates that the Commission ought not take the irrevocable step of adopting LPFM until, at the very earliest, all DAB testing is final and a more complete sense of LPFM/DAB interaction can be gauged. <sup>28/</sup> Moreover, USADR's preliminary studies indicated that a single LPFM station could create an area of interference of as much as 40 square kilometers (or 15 square miles) to a full power station's digital signal, which, in densely populated areas, could result in interference to thousands of households. <sup>29/</sup> The same study shows that this result would be exacerbated by the presence of any more than one LPFM station in the same region. <sup>30/</sup>

Thus, on this record, substantial evidence -- and common sense -- show that LPFM will adversely affect, and may even prevent, the transition to DAB. No evidence supports the possibility that technical solutions might evolve to overcome all the delays that LPFM would visit on DAB implementation, especially if the Commission wants digital receivers to be affordable for all segments of the general public. Until the transition to DAB has been effectuated, the Commission, as Chairman Kennard has explained in another forward-looking communications context, should at least *do no harm* to the future of digital radio, especially given that the digital future may facilitate the creation of additional FM stations. <sup>31/</sup>

**III. THE RECORD ALSO ILLUSTRATES THAT PRO-LPFM ASSERTIONS AS TO THE ALLEGED BENEFITS OF THE PROPOSAL OFFER NO BASIS FOR ITS ADOPTION.**

---

<sup>28/</sup> Comments of USA Digital Radio, Inc. at 7.

<sup>29/</sup> See *id.* at 7, Exhibit A.

<sup>30/</sup> *Id.*

<sup>31/</sup> ~~William E. Kennard, Chairman, Federal Communications Commission, Wall St. J. at A18 (August 24, 1999).~~

The irony built into the Proposal is that, if adopted, it would foist hundreds of additional radio stations on the FM band in an attempt to ~~A~~ restore  $\cong$  diversity to radio. However, the past 20 years have seen radio stations markedly and consistently increase **in number**. Since 1980, approximately 3,500 radio stations have been added. This upswing in the number of radio stations was not without cost: the increase in AM stations resulted in reduction of audio quality in that service, and led to the Commission to encouraging parties to reduce the number of AM stations. ~~32/~~ Portentously Similarly, the proliferation of generally small FM stations ~~33/~~ in Docket 80-90 weakened the health of the industry -- leaving many stations with insufficient funds to provide high-quality of adequate service. ~~34/~~

---

~~32/~~ The additional dangerous irony that the Proposal might ~~A~~ AM-ize  $\cong$  the FM band was identified by several commenters. See, e.g., NAB Comments at 15. The problems which the AM band still suffers because of overcongestion is alone sufficient reason to reject the Proposal.

~~33/~~ ~~Despite some indication to the contrary in the Notice~~ Of course, it goes without saying that, if the Commission chooses to disregards the comments of a huge number of FM service providers, the technical data of several reliable organizations, and the dictates of common sense, any LPFM station at least should be limited in power to no more than 100 watts if such stations are to qualify ~~in order to be justified as a "new" type of service.~~ (Certainly, the Commission cannot expect to deem a 1000 watt station, which is larger than many existing full power stations, as "low power." As a rough comparison, ~~Low power television stations, as a rough comparison,~~ generally have service diameters of no more than one-third of a typical full power television station; in any event, ~~certainly,~~ LPTV stations do not regularly surpass the contours served by size of full-power television stations. Any low power FM station must be similarly limited.) Accordingly, the small stations created by Docket 80-90 (and of Class D noncommercial stations) must be recognized as the most illustrative historical precursors of this Proposal, and the subsequent and various failings of each of these antecedents must be deemed ~~simply another~~ additional reasons s to reject the Proposal.

~~34/~~ See, e.g., *Revision of Radio Rules and Policies*, 7 FCC Rcd 2755 (1992) (noting that, since 1984, ~~A~~ [t]he number of radio stations has continued to grow, as has the number of non-radio outlets, such as cable, that compete with radio broadcasters for audience and advertising. . . . More than half of all commercial radio stations lost money in 1990, and small stations in particular have been operating near the margin of viability for years. $\cong$ )

This track record underscores that any attempt to create more radio stations in hopes of increasing viewpoint diversity or encouraging particular programming absolutely must set forth clear goals and demonstrate the means chosen to accomplish them will actually succeed, or the Commission risks frustrated expectations by its addition of radio. Unfortunately, the comments supporting the Proposal fail to establish any sufficient reason to believe that the Proposal, absent further restrictions that may suffer legal or constitutional infirmities, will result in more diverse viewpoints or other meaningful benefits.

The comments filed here in support of LPFM in hopes of justifying adoption of the Proposal make the interrelated arguments that (i) LPFM, as proposed, will aid viewpoint diversity, result in additional local programming, and increase new full-power broadcast entrants; and (ii) LPFM is the solution for the alleged ills of reduced programming diversity resulting from recent consolidation in the industry. Given the record in this proceeding, however, neither of these arguments stand up under closer scrutiny. Indeed, neither argument (nor the two taken together) establishes sufficient reason to adopt LPFM, especially given extensive studies demonstrating the serious dangers -- to both present and future FM services -- of the Proposal.

- A. *LPFM, without constant oversight -- and possibly illegal regulation -- likely will not increase viewpoint diversity, foster local programming, or increase new full-power broadcast entrants.*

The Commission's underlying rationale in support of the Proposal was to serve three laudable, albeit unmeasurable, interests: increased viewpoint diversity, improved local programming, and additional opportunities for new full-power entry. <sup>35/</sup> However, even the comments supporting LPFM show that the Proposal will not necessarily achieve any, let alone all, of these admirable goals.

For example, one commenter insists that the Commission be vigilant in regulating the programming and format of all LPFM licensees, and mandate that LPFM owners provide access to third parties (perhaps upon request), so that LPFM operations won't fail to enhance local programming or viewpoint diversity. <sup>36/</sup> Another commenter argues that the Commission should reimpose significant programming regulations and local ownership or officership (i.e., quasi-integration) requirements -- notwithstanding the questionable practical effect and legal validity of such measures -- in order to increase the likelihood that particular LPFM stations foster viewpoint diversity and localism. <sup>37/</sup>

Such propositions are wholly impractical, and might even violate Commission policy and the Constitution given the current media marketplace. Moreover, this is not even the most fundamental difficulty with such pro-LPFM comments. A more central, and imposing concern, at this stage in the proceeding, is that this perceived need -- *by LPFM proponents* -- for continuing regulatory oversight of LPFM stations confirms that the Proposal alone by no means is guaranteed of accomplishing its primary public interest benefits.

---

<sup>35/</sup> See Notice at n.3.

<sup>36/</sup> See Comments of Brian Helvey and Edward Voccia, Appendix at 12-14.

<sup>37/</sup> See Comments of United Church of Christ, Office of Communications, *et. al.*, at 8-9.

On the other hand, parties conversant in the history of ~~A~~micro ~~=~~ stations perceive the inherent flaw in the Proposal: ~~A~~the Commission will not achieve its stated desires with the LPFM service now envisioned. ~~=~~ 38/ Cox Radio, among others, has brought into sharp relief the *Notice* ~~=~~s logical and practical defects in its assumption that the Proposal necessary (or even likely) will result in increased viewpoint diversity and better local programming. 39/ Furthermore, to the extent the Commission continues to associate ownership diversity as relevant to viewpoint diversity, at least one minority broadcaster confirms that LPFM stations pose even more of a threat to minority-owned full power services than to other full power broadcasters. 40/ Another broadcast entity ~~B~~ the apparent mission of which is to serve minority audiences -- confirms a hidden (and certainly unintended) danger embedded in the Proposal: if adopted, this particular entity would divest its full-power station in order to ~~A~~downgrade ~~=~~ to a low power facility with better coverage characteristics. 41/ Collectively, such comments more than sufficiently confirm that the Proposal likely will fail to accomplish, to any meaningful extent, its core goals. 42/

*B. Recent trends in the industry have not limited the programming choices available to consumers.*

Comments favoring the establishment of LPFM often hint at the threat economic rationalization in the radio industry may pose to diversity. The record in this proceeding, however, does not evidence a significant loss of programming diversity sufficient to warrant adoption of the Proposal.

---

38/ Comments of JET Broadcasting Co., Inc. at 9.

39/ Comments of Cox Radio, Inc. at 13-17.

40/ See Comments of Mega Communications, L.L.C. at ii (~~A~~LPFMs will harm minority broadcast voices in particular. ~~=~~)

41/ Comments of Morris Broadcasting Company at 1.

42/ Comments of National Public Radio, Inc. at 27.

As an initial matter, to the extent these concerns refer to *format* diversity, they are unfounded. Recent years have seen no diminishment of format diversity. <sup>43/</sup> Hence, as noted by NAB, A the Commission cannot base its LPFM proposals on any lack of programming choices. <sup>44/</sup>

Second, to the extent such comments are intended to point to aspects of programming diversity other than A format, <sup>45/</sup> they are equally unfounded, as such suggestions overlook the recent proliferation of media, both inside and outside radio. For example, most LPFM proponents neglect to mention that the Proposal, even if implemented absent regard for crucial interference protections, is unlikely to result in more than the 3,000-plus radio stations that have been added nationwide in just the last 20 years. Few LPFM advocates -- if any -- consider the potential of satellite radio, which to some extent will provide divergent programming from sources other than existing broadcaster licensees. Even more astoundingly, relatively few LPFM proponents recognize the vast potential of the Internet, and even when they do, they marginalize that medium as not being the same as radio.

These perspectives -- which center on an ideal that only terrestrial radio should be a factor in addressing media diversity -- is myopic, and, moreover, a wholly insufficient basis for Commission action here. As Cox and other commenters demonstrate, the Internet absolutely must factor into any discussion of media diversity as a real and vital channel of communication benefiting U.S. consumers. Indeed, the number of Americans enjoying Internet A radio <sup>46/</sup> has exploded of late. <sup>45/</sup> In fact, as put forth in a number of comments, Chairman Kennard himself voiced his belief that the Internet is tantamount to broadcasting just months after issuance of the

---

<sup>43/</sup> NAB Comments at 6 (detailing increases in format diversity since 1996).

<sup>44/</sup> *Id.* at 7.

Notice. [46/](#)

Moreover, the issue is not whether the Internet -- or any other media -- is coterminous with broadcast radio. The real issue is whether further congestion of the FM band is needed to foster specific types of additional programming. It is not. Consumers don't listen to broadcast radio out of a lack of other available media choices. Indeed, most radio listening occurs outside the car, in numerous places where consumers can obviously access many other forms of media. Even in their cars, consumers are free to choose from an increasingly growing array of programming choices, from pre-recorded music or texts (in various configurations, *i.e.*, audio tape, CD, mini-disk, etc.), to the imminent commencement of satellite radio service. Hence, factually speaking, terrestrial radio should not be perceived as the only means for one particular speaker or group of speakers to reach a particular audience or audiences. [47/](#)

Finally, as noted, it is far less than certain that all LPFM stations will develop their own formats rather than simply mimicking (on a smaller scale) a successful format (or programming) already prevalent in many large or mid-size markets. [48/](#) Even the proponents of LPFM acknowledge that an LPFM station must respond to the needs of its public to truly serve

---

[45/](#) See, *e.g.*, Comments of Cox Radio, Inc. at 14.

[46/](#) See Speech to the National Association of Broadcasters (April 20, 1999).

[47/](#) It bears noting that the niche which LPFM seems designed to its proponents to fill would appear to best served over the Internet. LPFM advocates generally visualize stations that will fill a particular subject-matter niche or provide programming to a specific segment within a community. These goals, however, would seem more appropriate for the Internet, and, by contrast rather inappropriate for radio, the original *mass media*. See, *e.g.*, Comments of the Corporation of Public Broadcasting at 3.

[48/](#) In the *Notice*, the Commission expressly focused its research on such large and mid-size markets. Such a focus makes sense in one regard: in less crowded markets, there should be less need to eliminate established interference protections simply to create spectrum space for an unproven low power station, as more spectrum should be available. However, such concern for markets that *already are well-served* diminishes the probability that LPFM stations actually will provide any new or diverse programming

the public. <sup>49/</sup> Not coincidentally, this kind of responsiveness is also crucial to the programming decisions of existing radio stations. It would indeed be surprising if LPFM stations were not tempted to ape the programming styles already available in most larger radio markets, with only slight variations. These nominal variations do not justify the likely public interest costs of LPFM, especially in markets served by a numerous radio stations and other media.

---

that is significantly valued by the area=s inhabitants.

<sup>49/</sup> See Comments of Brian Helvey & Edward Voccia, Appendix, at 13 (noting that LPFM stations must include A music and related formats= that appeal to their listeners).

#### IV. CONCLUSION

In the conclusion of his recent comments to the NAB, Chairman Kennard stated that the Commission is "anxious to work with [existing broadcasters] in developing the best digital service for you and your listeners." <sup>50/</sup> Yet, to this point, the Commission has shown itself unwilling to take any action to facilitate such development. In particular, it has refused to postpone consideration of this proceeding B which may delay any digital radio transition for years or longer B until a digital radio Notice of Proposed Rule Making has been issued, despite the clear statements of broadcasters and technicians that such delay is necessary.

As troubling, such tacit refusal to treat DAB contemporaneously with LPFM is indicative of the unseemly haste of this entire proceeding. The sweeping nature of the Proposal demands that the issues considered herein must not be decided quickly or in the face of insufficient data (or without public comment regarding the methodologies used to obtain that data). In sum, the Proposal turns on issues that require thorough technical understanding, both of theory *and* in practice. The issues raised here should *not* be resolved by a mere count of votes among sundry activists. <sup>51/</sup> Rather, they require a sober assessment of how LPFM may will harm the existing U.S. radio public, and whether the flood of new stations will do anything at all to significantly benefit that public, without overtaxing either the Commission=s capabilities, or the future of radio. And if the data does not conclusively favor LPFM, the Commission owes it to the American people to A do no harm." ~~Upon adoption, a proposal like LPFM becomes a nearly impossible egg to unscramble.~~

---

<sup>50/</sup> Speech of Chairman William E. Kennard to National Association of Broadcasters at 3 (Sept. 2, 1999).

<sup>51/</sup> As the Commission is well aware, the fiercely competing desires ~~held by~~ of various individuals and groups to develop their own radio stations was the key impetus

In any case, at present, the record here provides no basis for adoption of LPFM. Rather, the record overwhelmingly shows that adopting the Proposal would do serious harm to existing FM services -- from full power FM radio to FM translators to FM reading services for the visually impaired -- and could indefinitely delay the advent of digital audio broadcasting, which all radio may need to remain competitive. The Proposal offers no more than a ghost of a possibility of benefits, the extent of which, even assuming a best-case scenario, is insufficient overcome the guaranteed negatives detailed above upon implementation of the Proposal. Hence, the Commission should reject the Proposal or, at minimum delay any further consideration of it until the transition to digital radio is well underway.

For all the foregoing reasons, Big City asks that the Commission reject or refuse to consider any general LPFM Proposal at this time.

Respectfully submitted,

**BIG CITY RADIO, INC.**

By: \_\_\_\_\_  
Michael Kakoyiannis  
President

\_\_\_\_\_, [September 17, 1999](#)

behind the creation of the Commission, as well as its being vested with extensive powers to limit spectrum use. *See, e.g., Deregulation of Radio*, 84 FCC 2d 968, 977-78 (& 25) (1981) (refusing to relax technical requirements, lest the nation see a return to that unregulated period prior to 1927 when chaos rode the air waves). As the Commission is also aware, even elimination of second and third adjacent channel safeguards would not be enough to satiate the interest of non-broadcasters in owning a radio station, as the Proposal, at most, intends to offer a few thousand such stations. Accordingly, the effort of a few LPFM advocates to render the Commission no more than a vote-counting device -- *see, e.g., Comments of Michigan Music Is World Class at 1*-- must be rejected if the Commission is not to deny its own reason for existence.